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3 CORNELL UNIVERSITY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KEVIN VANGINDEREN.

) Case No. 07-CV-2045-BTM-JMA

Plaintiff,

Hon. Barry T. Moskowitz

V.

DEFENDANT'S NOTICE OF
SPECIAL MOTION TO STRIKE
AND SPECIAL MOTION TO
STRIKE PLAINTIFF'S
COMPLAINT PURSUANT TO
SECTION 425.16 OF THE
CALIFORNIA CODE OF CIVIL
PROCEDURE

CORNELL UNIVERSITY.

Defendant.

[Per chambers, no oral argument unless requested by the Court]

[Request for Judicial Notice filed concurrently]

Hearing Date: December 21, 2007
Time: 11:00 a.m.
Place: Courtroom 15

Action Filed: October 1, 2007

1 TO DEFENDANT AND HIS ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on December 21, 2007, at 11 a.m., or as soon
3 thereafter as counsel may be heard in the United States District Court for the
4 Southern District of California, Courtroom 15, located at 940 Front Street, San
5 Diego, California 92101, defendant Cornell University (“Cornell”) will and hereby
6 does move for an order striking the Complaint of plaintiff Kevin Vanginderen
7 (“Plaintiff”) in its entirety, with prejudice and without leave to amend, and, further
8 awarding Cornell its reasonable attorneys’ fees and costs incurred in bringing this
9 special motion to strike.

10 This special motion to strike will be and is made upon the following grounds.

11 Plaintiff filed this action after discovering in the electronic archives of the
12 Cornell University Library a 24-year-old report in the *Cornell Chronicle* that
13 described Plaintiff’s criminal activities as a Cornell undergraduate. Plaintiff alleges
14 that the news account is libelous and reflects public disclosure of private facts.

15 The Complaint is indisputably a “strategic lawsuit against public
16 participation” (“SLAPP”) that is barred by the anti-SLAPP statute, California Code
17 of Civil Procedure § 425.16. The Complaint’s allegations arise entirely out of
18 Cornell’s actions in furtherance of the right to engage in “conduct in furtherance of
19 the exercise of the . . . constitutional right of free speech in connection with a public
20 issue or an issue of public interest.” Cal. Code Civ. Pro. § 425.16(e)(4).

21 Because the Complaint is a SLAPP lawsuit, Section 425.16(b)(1) and relevant
22 Ninth Circuit authorities require that the Complaint be stricken unless Plaintiff
23 makes a *prima facie* showing that his claims are legally and factually sufficient.
24 Plaintiff cannot show either because, as set forth in detail in Cornell’s
25 accompanying Memorandum of Points and Authorities, the *Cornell Chronicle* report
26 on Plaintiff’s criminal activities is fair and true and any claim would be time-barred.
27 A simple examination of the records of the Ithaca City Court, attached as Exhibit A
28

1 to the concurrently filed Request for Judicial Notice, demonstrates the truth of the
2 news account of the criminal proceedings.

3 As the Complaint is a SLAPP lawsuit unsupported by law or fact, Cornell is
4 entitled to recover from Plaintiff Cornell's reasonable attorneys' fees and costs
5 incurred in bringing this special motion to strike, pursuant to California Code of
6 Civil Procedure § 425.16(c) and relevant Ninth Circuit authorities.

7 This special motion to strike will be and is based upon this Notice, the
8 accompanying Memorandum of Points and Authorities, the accompanying Request
9 for Judicial Notice and exhibits attached thereto, the Declarations of Valerie Cross
10 Dorn and Anne Richardson Kenney, the records and files in this action and upon
11 such further oral and documentary evidence as may be presented at or before the
12 hearing on this special motion to strike.

13

14 DATED: November 2, 2007

BERT H. DEIXLER
CHARLES S. SIMS
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NELSON E. ROTH
CORNELL UNIVERSITY

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19 s/Bert H. Deixler

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Bert H. Deixler

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Attorneys for Defendant,
CORNELL UNIVERSITY

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